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EXAMINER	
ANTONIENKO, DEBRA L	
ART UNIT	**PAPER NUMBER**
3689	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/720,780	HODGES ET AL.	
	Examiner	Art Unit	
	DEBRA ANTONIENKO	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *1* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This is a Non-Final Office Action in response to communications received June 6, 2008, wherein:

Claims 1-8 and 16-20 have been amended;

Claim 1 is withdrawn; and

Claims 2-20 are pending.

Response to Amendment

2. Applicant's change of format in numbering the claims is accepted. Objection is withdrawn.

3. Applicant's amendments to the specification regarding the title and the referenced application numbers are accepted. Objections are withdrawn.

Election/Restrictions

4. Newly submitted amended Claim 1 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons. Claim 1 basically reads: conducting a task (an online auction for an item (service)), causing display of a rating of a provider and then causing display of another rating. Note that "causing" an action is different from actually performing an action. The independent claim, according to the preamble, is directed to providing communication services. The body of the claim, however, merely recites conducting an auction and causing displays. "Causing" only requires serving as the reason for an action, though not necessarily

performing the action. Therefore, Claim 1 is distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention or scope, this invention has been constructively elected by original presentation/scope for prosecution on the merits which are presented by Claims 2-20. Accordingly, Claim 1 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Double Patenting

5. Claim 19 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 7,464,179 in view of Lang, U.S. Patent Application Publication Number 2002/0146102 A1 (hereinafter referred to as Lang) in view of Homayoun, U.S. Patent Number 5,970,121 (hereinafter referred to as Homayoun) and further in view of Kato, U.S. Patent Application Publication Number 2002/0112060 A1 (hereinafter referred to as Kato). Although the conflicting claims are not identical, they are not patentably distinct from each other.

U.S. Patent Number 7,464,179	U.S. Application Number 10/720780
A method of providing communications services, comprising:	**A method according to claim 2, wherein providing the communications services comprises:**
when a subcontracted processing service is required, interrogating the different service provider to fulfill the subcontracted processing service;	**determining a subcontracted processing service is required from a different service provider,**
grouping together individual packets of data as a segment, each of the	**grouping together individual packets of data as a new segment that requires the**

individual packets of data in the segment requiring the subcontracted processing service;	**subcontracted processing service,**
dispersing the segment to the different service provider for fulfillment of the subcontracted processing service;	**subcontracting the new segment to the different service provider to receive the subcontracted processing,**
receiving a result of the subcontracted processing service from the different service provider;	**receiving a result of the subcontracted processing service,**

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory

double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 7 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 19 recite “receiving results… receiving a result.” It is vague and indefinite what results or how the results are achieved.

Claims 7 and 19 recite “determining a subcontracted processing service is required.” It is unclear how the determining is accomplished.

Claims 7 and 19 recite the limitation “for subsequent processing services.” There is insufficient antecedent basis for this limitation in the claim.

Furthermore, it is unclear whether the processing services are the communications services.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 2-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class such as a particular machine that imposes meaningful limits on the method claim's scope or (2) transform underlying subject matter (such as an article or materials). See *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. With respect to independent Claims 2 and 8, the claim language does not include the required tie or transformation and thus is directed to nonstatutory subject matter. Claims 3-7 and 9-19 are dependent, respectively, and are rejected in a like manner.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Examiner's Note: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

5. **Claims 2-5, 8, 9, 17, and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Homayoun, U.S. Patent Number 5,970,121 (hereinafter referred to as Homayoun) and further in view of Hurwitz.

Regarding Claims 2, 8, and 20, Lang teaches a method of providing communications services, comprising: bidding/receiving via an online auction to provide the communications services (Figure 1; [0009]; [0015]-[0017]); and providing the communications services ([0068]-[0069]).

Lang does not teach receiving a service provider rating from a recipient of the communications services indicating whether the communications services were satisfactorily provided; and providing a recipient rating in which a service provider indicates whether the recipient of the communications services satisfactorily paid for the communications services.

However, Homayoun discloses receiving a service provider rating from a recipient of the communications services indicating whether the communications services were satisfactorily provided by the service provider (Figures 4 and 5; column 2, lines 34-51; column 7, lines 11-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lang's method to receive ratings of services in order to monitor the services provided.

Furthermore, Hurwitz discloses providing a recipient rating … indicates whether the recipient satisfactorily paid (column 2, lines 17-23; column 4, lines 13-26). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lang's method to provide payment ratings in order to aid customers to build a good reputation profile.

Regarding Claims 3 and 17, Homayoun further discloses wherein receiving the service provider rating comprises receiving feedback regarding the recipient of the communications services, the feedback indicating whether the recipient was satisfied with the communications services (Figures 4 and 5; column 2, lines 34-51; column 7, lines 11-38). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lang's method to receive ratings of services in order to monitor the services provided.

Regarding Claim 4, Homayoun further discloses wherein receiving the service provider rating comprises receiving the rating from a client communications device associated

with the recipient of the communications services (column 7, lines 12-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to receive ratings of services from a client communications device in order to provide convenient and timely ratings.

Regarding Claim 5, Hurwitz does not explicitly disclose wherein providing the recipient rating comprises indicating the recipient's credit card accepted charges for the communications. However, Hurwitz discloses that *[t]ransaction services intermediary receives information about the transaction from the auction site, the buyer, and the seller and coordinates fulfillment of these functions by interacting with other entities such as… credit card companies* (column 2, line 64 - column 3, line 29). It is well known that when purchasing by credit card, acceptance or refusal is indicated almost immediately. Also, it would have been obvious to one of ordinary skill in the art at the time of the invention to include credit card transactions in the recipient rating as using a credit card to pay online is very popular.

Regarding Claim 9, Lang further teaches auctioning a block of time of usage ([0012]; [0015]-[0017]).

7. **Claims 6 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Homayoun in view of Hurwitz and further in view of English.

Regarding Claims 6 and 18, English teaches causing display of the service provider rating during a future online auction to indicate that future communications services will be satisfactorily provided (Abstract; [0062]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to provide the ratings of services in order for customers to make a more informed choice.

8. **Claims 7 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Homayoun in view of Hurwitz and further in view of Kato, U.S. Patent Application Publication Number 2002/0112060 A1 (hereinafter referred to as Kato).

Regarding Claims 7 and 19, Kato discloses a wherein providing the communications services comprise: receiving a first data stream comprising packets of data packetized according to a packet protocol ([0069]), segmenting the first data stream into segments ([0069]), dispersing the segments via a communications network for subsequent processing services ([0059]; [0069]), receiving results of the processing services ([0059]; [0067]-[0069], determining a subcontracted processing service is required from a different service provider, grouping together individual packets of data as a new segment that requires the subcontracted processing service, subcontracting the new segment to the different service provider to receive the subcontracted processing, receiving a result of the subcontracted processing service, aggregating the results of the processing services and the result of the subcontracted processing service into a second data stream ([0059]; [0067]-[0069]), and communicating the second data stream

via the communications network ([0059]; [0067]-[0069]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to use packet protocol, segmentation, and aggregation in order to provide efficient service.

9. **Claims 10-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lang in view of Homayoun in view of Hurwitz and further in view of Snelgrove, U.S. Patent Number 6,535,592 B1 (hereinafter referred to as Snelgrove).

Regarding Claim 10, Snelgrove teaches wherein the block of time comprises at least one of i) a maximum data transfer rate and ii) a minimum data transfer rate (column 6, lines 42-44). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to use minimum data transfer rate in order for customers to make a more informed choice.

Regarding Claim 11, Snelgrove further teaches auctioning a block of time of usage, wherein the block of time may be shared between multiple recipients of the communications services (column 5, lines 41-43 and lines 61-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to offer sharing in order to provide convenience to the customer.

Regarding Claim 12, Snelgrove further teaches auctioning a block of time of usage, wherein the block of time may be shared between multiple telephone numbers (column 6, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time

of the invention to modify the method to offer sharing in order to provide convenience to the customer.

Regarding Claim 13, Snelgrove further teaches auctioning a block of time of usage, wherein the block of time may be shared between multiple client communications devices (column 6, lines 55-60; column 7, lines 1-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to offer sharing in order to provide convenience to the customer.

Regarding Claim 14, Snelgrove further teaches auctioning a block of time of usage, wherein the block of time may be shared between multiple client communications devices associated with multiple users (column 6, lines 55-60; column 7, lines 1-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to offer sharing in order to provide convenience to the customer.

Regarding Claim 15, Snelgrove further teaches negotiating with a group of recipients for the communications services, the group comprising recipients willing to pay for the communications services and recipients unwilling to pay for the communications services, wherein the recipients willing to pay for the communications services are permitted to sponsor the recipients unwilling to pay for the communications services (column 5, lines 3-5; column 7, lines 16-18). It would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the method to offer alternative payment plans in order to provide convenience to the customer.

Regarding Claim 16, Snelgrove, wherein providing the communications services comprises providing the communications services to both recipients willing to pay for the communications services and recipients unwilling to pay for the communications services (column 5, lines 3-5; column 7, lines 16-18). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method to offer alternative payment plans in order to provide convenience to the customer.

Response to Arguments

10. Applicant's arguments with respect to Claims 1-8 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBRA ANTONIENKO whose telephone number is (571)270-3601. The examiner can normally be reached on Monday through Thursday, 7:30 AM to 4:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DA

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689
2/16/09